STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of TERIK MAURICE BARNES,
Minor.

MICHELLE C. BARNES,

Petitioner-Appellee,

v

MELISSA KAY DANIELLE LAWSON KHAN,

Respondent-Appellant,

and

JAY BREWTON BARNES,

Respondent.

UNPUBLISHED
September 17, 2009

No. 289938
Washtenaw Circuit Court
Family Division
LC No. 08-000046-NA

Before: Stephens, P.J., and Jansen and Wilder, JJ.

PER CURIAM.

Respondent Melissa Khan appeals as of right from a circuit court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(f) and (g). We affirm.

The petitioner has the burden of proving a statutory ground for termination by clear and convincing evidence. MCL 712A.19b(3); *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). We review the trial court's decision for clear error. *Id.* at 356-357. "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004).

The trial court terminated respondent's parental rights under both MCL 712A.19b(3)(f), and (g). Section 19b(3)(g), permits a trial court to order termination where "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." The trial court found that from October 2001 to the time of the termination proceeding, petitioner was the full legal guardian of the minor child. Within months of the guardianship being established, the probate court ordered supervised visits between

respondent and the minor child. After four supervised visits, respondent mother stopped arranging or paying for the supervision. Visitation thereafter was infrequent, with respondent visiting the minor child in a public place only once or twice each year between June 2004 and 2006. With the exception of the initiation of supervised visits while the termination proceeding was pending, respondent had not seen the minor child since April 2006. Telephone visitation with the minor child was not regular, frequent or lengthy.

Respondent testified during the termination hearing that at that time, she lived in a rented trailer with her other two children, and that prior to her then current living arrangement, she had lived in 13 places in the nine years after the minor child's birth. She testified to difficulty maintaining employment because she had to take six months of bed rest for health reasons during all three pregnancies. Notably, respondent acknowledged that while she would be prepared to have the minor child live with her, she really only wanted to have some visiting time with him. Respondent also acknowledged that it was in the minor child's best interests for the minor child to stay with petitioner, rather than remove the child from petitioner's care and custody.

Dr. Karen Mikus, a psychologist with specialized knowledge in child development, testified that the minor child was primarily attached to petitioner and that the two were very bonded, whereas the minor child's only has feelings of fear and anxiety concerning his mother. Dr. Mikus testified that it would be in the minor child's best interests for the petitioner to adopt him and provide him with a sense of permanence, and that it would cause him harm if he was removed from petitioner's care and custody. Dr. Mikus further indicated that the minor child both understood and needed permanence and security in his placement with petitioner. Finally, respondent's mother testified that respondent gave the minor child a birthday party, but was unable to otherwise testify to any regular or substantial support of the minor child provided by respondent.

Given this record, we are not left with a firm and definite conviction that a mistake was made by the trial court in finding clear and convincing evidence that, without regard for her intent, respondent failed to provide proper care and custody of the minor child and would not do so in a reasonable time given the age of the child. Given the seven year length of the guardianship before respondent's parental rights were terminated, and further given respondent's admission that her primary interest was in visiting periodically with the minor child, not in caring for him, it was plain that respondent was not fully prepared to provide the kind of care and custody that would offer the permanence and stability the minor child needed in his life. Termination, therefore, was appropriate under MCL 712A.19b(3)(g).

The trial court also terminated respondent's parental rights under MCL 712A.19b(3)(f)(i) and (ii). However, because the trial court did not err in finding at least one statutory basis for terminating respondent's parental rights, we need not address respondent's challenge to the trial court's finding under section 19b(3)(f)(i) and (ii). *In re Sours*, 459 Mich 624, 640-641; 593 NW2d 520 (1999).

Respondent also argues that MCL 712A.19b(3)(f) is unconstitutional as applied in the circumstances of this case. However, because we affirm the trial court's finding that termination of respondent's parental rights was appropriate under section 19b(3)(g), it is unnecessary for us to address respondent's constitutional claim in order to resolve the case, and therefore, we

decline to do so. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993).

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Kathleen Jansen
/s/ Kurtis T. Wilder